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No. 161.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 161.

JOSEPH WHELESS et al., Appellants, vs. CITY OF ST. LOUIS et al., Appellees.	}	No. 17,576.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

APPELLANTS' STATEMENT, BRIEF AND ARGUMENT.

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JOSEPH WHELESS et al.,
Appellants,
vs.
CITY OF ST. LOUIS et al.,
Appellees.
No. 17,576.

STATEMENT OF THE CASE.

This appeal comes up on a certificate of jurisdictional question. The single question presented is that of the jurisdiction of the Circuit Court, in respect of the "sum or value" of the "matter in dispute."

Complainants, suing for themselves and all others in like interest, seek to enjoin the defendants from charging the cost of a public street improvement, in excess, under the terms of the contract between the defendant city and the construction company, of $10,000, as a special tax against the abutting property of complainants, and from assessing and levying the same on their said property, and from issuing special tax bills in payment of the same; on the ground that the provisions of the Charter and ordinance, authorizing such charge and assessment, and the contract in pursuance thereof,

are unconstitutional and illegal. And they pray a decree annulling these provisions of the Charter, ordinance and contract.

The Charter of the City of St. Louis, in its Article VI. "Of Public Improvements," provides that the *cost* of paving streets, alleys and sidewalks, and of the materials of the same, *shall be charged upon the adjoining property as a special tax*, and collected from the owners of the same. This cost is to be computed, upon the completion of the work, by the president of the Board of Public Improvements, and is to be assessed and levied by him as a special tax against the abutting property, according to the "front foot" method of assessment. Special tax bills are then to be issued and delivered to the contractor in payment of the work; which tax bills shall be first and prior liens against the abutting property, and the same may be enforced in any court of competent jurisdiction. (Trans., pp. 2 and 3.)

The Municipal Assembly of the City of St. Louis, on February 1, 1899, passed "An Ordinance for the Improvement of Whittier street between Washington boulevard and Finney avenue." (Trans., p. 3,) The city thereupon entered into a contract with the defendant Gilsonite Roofing and Paving Company, for doing the work of street improvement, at an estimated cost in excess of $10,000.00. (Trans., p. 4.)

The complainants in this case are the owners of practically all the property abutting this improvement on Whittier street, between Washington Boulevard and Finney avenue; and they file this bill in behalf of themselves and all others interested in the "matter in dispute."

The bill sets out the several provisions of the Charter, ordinance and contract in regard to the public improvement and the cost and manner of payment of the same, as stipulated in said contract; alleges the doing of the work by the defendant company;

and that the defendant, McMath, President of the Board of Public Improvements, "will and is about to levy and assess the costs of the said improvement in an amount largely in excess of $10,000.00, as a special tax against the property of these complainants; and is about to, and will, unless restrained, make out, certify and deliver to the defendant company, in payment of said work, special tax bills against the property of these complainants, which will constitute a first and prior lien on their said several lots respectively."

The bill avers that the aforesaid provisions of said Charter, ordinance and contract, are illegal and void as being repugnant to the Constitution of the United States, and in violation of Articles V and XIV of the amendments thereto, in that they and the threatened acts of the defendants in accordance with them, deny to complainants the due process of law, and subject their private property to being taken for public uses without compensation.

The writ of injunction is then prayed, "directed to the said several defendants, enjoining the said City of St. Louis and President of the Board of Public Improvements of said City, from levying or assessing the cost and expense of the said improvement of Whittier street against the property thereon abutting of these complainants, and those for whose use the suit is brought, and from issuing, or attempting to issue, special tax bills against these complainants or their property, or from otherwise creating liens or incumbrances against their said property or causing a cloud on the title thereto.

"And that the said defendant, the Gilsonite Roofing and Paving Company, its successors and assigns, be enjoined from demanding and receiving any such special tax bills against the property of these complainants, and from proceeding in any wise to create or enforce a lien on complainants' property by reason of said work or payment therefor, or from in any wise attempting to subject complainants or their property to

the payment of the costs and expenses of said work or any part thereof.

"And that the court, by its decree, declare the provisions of the foregoing Charter, Ordinance and contract, in so far as they pretended to impose the costs of said public improvement on these complainants or their property, to be illegal, unconstitutional and void, and without force or effect whatever to that end." (Trans., pp. 7 and 8.)

The bill thus seeks to enjoin as one whole and on behalf of all the parties concerned, the assessment and levy of the entire cost of the public improvement as a special tax and lien on all the property affected, and to declare void the contract, ordinance and charter provisions under which it was threatened to be assessed and levied, in an amount in excess of $10,000.00, the estimated cost of the public improvement under the contract between the City and the Gilsonite Co.

But the defendants, by a plea to the jurisdiction, denied the jurisdiction of the court in the premises, (Trans., p 11) for the alleged reason that no one of the parties complainant would be required to pay a special tax bill of so much as $2,000.00, and that, therefore, this is not a case "where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of $2,000.00," within the meaning of the Act of Congress prescribing the jurisdiction of the United States Circuit Court. The demurrer of complainants to this plea was overruled, (Trans., p. 15) and complainants refusing to plead further, the court rendered a decree dismissing the bill for want of jurisdiction. (Trans., p. 16.) From this decree complainants in open court appealed and the question of jurisdiction was duly certified to this court by the Circuit Judge. (Trans., pp. 19 and 20.)

Complainants ask the decree to be reversed and the cause to be remanded for hearing on its equities.

SPECIFICATION OF ERRORS.

1st. The court erred in overruling the demurrer to the plea to the jurisdiction of the court.

2d. The court erred in dismissing the bill for want of jurisdiction.

3d. The court erred in holding that it had no jurisdiction of the bill, because the amount of special tax which might be assessed against any one of the complainants severally would not exceed the sum or value of $2,000.

4th. The court erred in holding that the entire amount of the special tax to be assessed and levied under the ordinance and contract as the cost of the improvement of Whittier street, viz., over $10,000, was not the matter in dispute and within the jurisdiction of the court.

BRIEF.

I.

(*A.*) The "matter in dispute," in a suit in equity, is the whole object sought by the decree.

(*B.* The value of that object is the "sum or value" of the "matter in dispute."

(*a.*) In this case, the "matter in dispute" is *the right of the City of St. Louis to "charge the cost"* of a public improvement *"as a special tax against the adjoining property,"* and to *levy and assess the same* against complainants' property; which right the city asserts and complainants deny, and pray injunction against its exercise.

(*b.*) The "sum or value" involved in this suit is *the cost of the public improvement*, which the city asserts the right to so charge as a special tax, assess and levy, in amount over $10,000; which amount defendants would lose by a decree for complainants.

So say the courts:

"The matter in dispute between the parties is that which is asserted on one side and denied on the other."

Gibson vs. Shufeldt, 122 U. S. 27.

"By 'matter in dispute' *is meant the subject of litigation—the matter for which the suit is brought—and upon which issue is joined*, and in relation to which jurors are called and witnesses examined. The damages, or *prayer for judgment, must be regarded.*"

Lee vs. Watson, 68 U. S. 337.

"In a suit for an injunction the amount in dispute is the value of the object to be gained by the injunction."

Foster's Federal Practice, Sec. 16.

"The whole of the relief sought is the matter in dispute."

Handley vs. Stutz, 137 U. S. 366.

Estes vs. Gunter, 121 U. S. 183.

Washington Market Co. vs. Hoffman, 101 U. S. 112.

Overby vs Gordon, 12 Sup. Ct. Rep. 603.

"The main question at issue (in a suit to enjoin the *levy of a tax*) was the *validity of the bonds* • • • The amount in dispute, *in view of the main controversy*, far exceeds our jurisdiction."

Brown vs. Trousdale, 138 U. S. 389.

"The *value of the matter in dispute is measured by the whole tax*, and not by the separate parts into which it is to be divided when collected."

Davies vs. Corbin, 112 U. S. 36.

"The matter in controversy was the sum due the complainants collectively, not the particular sum to which each was entitled when the amount due was distributed among them."

Shields vs. Thomas, 58 U. S. 3.

"The Connemara," 103 U. S. 754.

"The Mamie," 105 U. S. 773.

Trust Co. vs. Waterman, 106 U. S. 65.

Some concrete cases of the application of this principle, showing that the *object of the suit* is the "matter in dispute," follows:

"The character of the nuisance (in a suit to abate a bridge as a public nuisance, where it was objected that the damages sustained by the plaintiff were not sufficient to give the court jurisdiction) and the sufficiency of the damage sustained are to be judged by the courts; but the want of a sufficient amount of damage having been sustained to give the court jurisdiction will not defeat the remedy, as *the removal of the obstruction is the matter in controversy, and the value of the object must govern.*"

Railroad Co. vs. Ward, 2 Black, U. S. 485.

And so, in a suit by a railway company to restrain a shipper from prosecuting a multiplicity of suits for overcharge in freight, the *maintenance of the rate* under

which the charges were made *is the real object of dispute.* The court say:

"In a suit for an injunction, the amount in dispute is the value of the object to be gained by the bill.

"An injunction may be of much greater value to the complainant than the amount in controversy in cases of dispute which have already arisen."

Railway Company vs. Kuteman (C. C. A.), 54 Fed. Rep. 547.
Symonds vs. Greene, 28 Fed. Rep. 34.
Whitman vs. Hubbell, 30 Fed Rep. 81.
Smith vs. Bivens, 56 Rep. 352.
Herbert vs. Rainey, 54 Fed. Rep. 248.
Clapp vs. City of Spokane, 53 Fed. Rep. 515.
Dickinson vs. Union B. & Tr. Co. 64 Fed. Rep. 895.

In Whitman vs. Hubbell (30 Fed. Rep. 81) a suit was brought to restrain the maintenance of an awning over a street. In overruling an objection to the jurisdiction, the court said:

"The matter in dispute is the value of the right to maintain the awning, not the amount of damage done by it to plaintiff."

In Symonds vs. Greene (28 Fed. Rep. 834), which was a suit to restrain the infringement of a trade-mark, the court said:

"There would be difficulty in maintaining the jurisdiction if the profits to be recovered were the measure of the orators' rights involved; but that is not so understood. An injunction may be of much greater value to the orator than any amount he may show himself entitled to."

In Oleson vs. Railway Co., (44 Fed. 1), it was held that:

"Where the object of a suit is to restrain the use of property by a person other than the owner, the right to use the property is the matter in dispute, and the value of such right must determine the question of jurisdiction."

"In a suit to enjoin a nuisance in the erection of coke-ovens, it was held that, if the amount of damage which would accrue to the plaintiff was not sufficient to give the court jurisdiction, the court would, nevertheless, have jurisdiction if the value of the prohibited erection equalled the jurisdictional amount."

Rainey vs. Herbert, 5 C. C. A. 183.

"In a suit to set aside conveyances of land as fraudulent, and a cloud upon complainant's title, the value of the matter in dispute is the value of the land."

Simon vs. House, 46 Fed. Rep. 317.

"In an action where the property attached upon a claim of less than $2,000, exceeded the value of $2,000, the amount in controversy was the value of the property attached."

Hoover & Allen Co. vs. Columbia Co., 68 Fed. 945.

"The Circuit Court has jurisdiction of a bill by a telegraph company to enjoin a state auditor from collecting state alleged illegal taxes, and from certifying to the county clerks the proportion of local taxes to be collected in each county, where the amount claimed to be due the state and the aggregate amount of such local taxes each exceeds $2,000."

Telegraph Company vs. Norman, 77 Fed. 13.

"In a suit to quiet title it is not the value of defendant's claim that constitutes the amount in controversy. It is the value of the whole of the real estate to which the claim extends."

Woodside vs. Ciceroni, 35 C. C. A. 177.

In a suit by a railroad to enjoin several ticket brokers from selling railroad tickets, the Court said:

"The amount or value of the matter in controversy is not the damage that might be specifically recovered in a suit upon any one or more of these contracts, but is the protection furnished to the plaintiffs and the loss prevented. It is the value of the whole object of the suit to the complainant which determines the amount in controversy."

Nashville C. & St. L. Ry. Co. vs. McConnell, 82 Fed. Rep. 65.

"The defendant insists that the Court is without jurisdiction, because the amount in controversy does not exceed $2,000; that is to say, that the amount which the complainant would have to pay for license to conduct his business does not amount to that sum. Jurisdiction is not determined in that way. *Jurisdiction is determined by the value of the right to be protected, or the extent of the injury to be prevented by the injunction.*"

Humes vs. City of Ft. Smith, 93 Fed. Rep. 857.

II.

In cases where several parties are joined in one suit seeking a common remedy, or contesting a like liability, the test of jurisdiction is whether the interest or liability of each is separate and distinct, or whether they have a common and mutual interest in the whole of the relief sought, joint as against the party opposed, though may be unequal or separable among themselves.

"The rulings of this Court are uniform and consistent to the effect that, where several plaintiffs claim under the *same title*, and the determination of the cause necessarily *involves the validity* of that title, this court has jurisdiction, *though the individual claims of none of them exceed the requisite amount*; but when the *matters in dispute* are *separate and distinct*, and are joined in one suit for convenience or economy, the case will be dismissed."

Davis vs. Schwartz, 155 U. S. 455.
N. O. Pac. Ry. Co. vs. Parker, 143 U. S. 42.
Gibson vs. Shufeldt, 122 U. S. 27.

"The general principle observed in all these cases is that if several persons be joined in a suit in equity or admiralty and have a *common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction.*"

Clay vs. Field, 138 U. S. 464.
Davies vs. Corbin, 112 U. S. 36.
Cases cited, *supra.*

III.

If the whole relief sought is one and entire against the party opposed, and he has no interest or concern in any ultimate separability or distribution of benefit among the parties joined, he can not object to the jurisdiction that, as between themselves, the "matter in dispute" is separable. As to him, it is one.

"The complainants had a common and undivided interest in the claim, and it was *perfectly immaterial to the appellant how it was to be shared among them.* He had no controversy with either of them on that point; and if there was any difficulty as to the proportions in which they were to share, the dispute was between themselves, and not with him."

Shields vs. Thomas, 58 U. S. 3.
"The Connemara," 103 U. S. 754.
Freeman vs. Dawson, 110 U. S. 264.
Handley vs. Stutz, 137 U. S. 366.
Davies vs. Corbin, 112 U. S. 36.
Overby vs. Gordon, 12 Sup. Ct. Rep. 603.

IV.

It is the direct and immediate relief sought, the present object of the decree, and not any mediate or collateral relief, or incidental effect or result of the decree, which is the object of suit, and determines the jurisdiction.

"It is well settled that our appellate jurisdiction, *when dependent upon the sum or value really in dispute* between the parties, is to be tested *without regard to the collateral effect* of the judgment in another suit. No matter that it may appear that the judgment would be conclusive in a subsequent action, *and is the direct effect of the judgment which can alone be considered.*"

Washington & Georgetown Ry. Co. vs. District of Columbia, 146 U. S. 227.
New England Mort. S. Co. vs. Gay, 145 U. S. 123.
Clay Center vs. Farmers' L. & T. Co., 145 U.S. 224.
Gibson vs. Shufeldt, 122 U. S. 27, and cases cited.

ARGUMENT.

The bill avers that the President of the Board of Public Improvements "is about to compute the cost of the improvement of Whittier street, and assess and levy the same in an amount exceeding $10,000, as a special tax and lien on complainants' property." The prayer is that he be enjoined from so doing, and the provisions of law and contract under which he assumes to act be decreed void.

The Charter of the City of St. Louis provides in its Sec. 18 of Art. VI.: "The costs of construction * * * shall be charged upon the adjoining property as a special tax."

The ordinance, No. 19,681, for the improvement of Whittier street, provides, in its Sec. 4: "The costs * * * shall be charged as a lien upon the property fronting or bordering upon the improvement herein provided for."

It is thus seen that the theory of the bill is that a single bill of cost, incurred under a single contract, in amount exceeding $10,000, is sought to be charged as a tax on the property abutting on the improvement on Whittier street between Washington and Finney avenues, and that the law under which this tax is imposed is in violation of complainants' rights of property under the Federal Constitution; and the relief sought is to prohibit the charging of such cost against complainants' property as a whole, and to declare the law unconstitutional.

The Charter and ordinance contemplate one singular and entire charge for the whole work, as stipulated in the contract; and the construction company has a lien upon the whole of the adjoining property chargeable therewith. This lien is inchoate in the law itself; it

begins its period of gestation with the passing of the ordinance and letting of the contract; it is, during all the time of the prosecution of the contract work, an inchoate and impending charge and lien upon the whole of the abutting property, necessary to be taken into consideration in any proposed transfer of property or in any certificate of title; and is all this time a cloud upon the title of the property; and it becomes merely perfected upon the completion of the work and the act of charging the contract cost upon the abutting land as a special tax; and the subsequent levy and assessment of the same upon particular lots and the issue of separate tax bills but serves to complete and administer the purpose of the law, to "*charge the cost as a special tax against the property.*"

The bill thus anticipates the threatened acts—the computation and charging of the cost against complainants' property, the assessing and levying of the same as a special tax, and the imposition of the lien of the same. This had not been done; the tax not yet levied; no apportionment of the special tax made; no individual liability created against this or that property owner; all was *in fieri*. The interest of all the complainants was one and the same; they sought to resist the charge of the cost against them altogether, or the levy of any tax at all, or the creation of any lien, on their property as a whole. They sought to declare void the provisions of law under which the contract, *in invitum* as to them, was made; which imposed the threatened liability as a whole, common to them all. They sought to declare void the contract which imposes a $10,000 illegal cost charge upon them generally and their property as a whole.

If the injunction should be granted, it would enjoin, not the enforcing of any individual liability fixed upon any or all of them separately, but the charging of the cost and the assessing and levying of a $10,000 tax in its entirety, and its imposition as a

whole against all the property abutting the improvement, from Washington boulevard to Finney avenue. It would enjoin the apportionment of the assessment upon the several lots, and the issuance of individual tax bills, by which process alone a separate and distinct liability on complainants severally could be created.

The decree would prevent, not myself, nor Barnhart, nor Shinnick, nor any individual property owner (except incidentally), from having to pay some part of the cost of the improvement which might thereafter be apportioned to him severally, but would prevent the City of St. Louis from shifting the entire cost of the improvement, over $10,000 under the contract, from itself and charging it as a whole illegally upon all the complainants. The decree would declare void the contract of the defendant Gilsonite Co., and cause it a loss of $10,000 by denying it a right under the contract to have the cost of the public work charged and assessed as a whole against the property abutting on the line of improvement.

It is thus clear that the "matter in dispute" is the right of the defendant city, under the charter, ordinance and contract in question, to charge and assess the cost of Whittier street as a $10,000 special tax against the adjoining property, and the right of the defendant company to demand and receive the benefit of the same, on the one hand; and on the other, the right of the complainants to resist the arbitrary and illegal charge and assessment. The "sum or value of the matter in dispute" is the $10,000 which the defendants would lose (as against complainants) as the result of decree for complainants, and which could not be charged or assessed at all by the granting of the relief prayed in their bill.

The interest of the complainants is common and entire. There is nothing about it, in any valid sense, which makes it "separate and distinct," and such as

"cannot be joined, for the sake of convenience or economy, so as to make up the jurisdictional amount." Complainants "join" nothing; there is no "separate and distinct liability;" for the simple reason that there is *no* liability separated or apportioned to any of them, and as matter of fact, no liability at all (except *in posse*), and cannot be, under the charter itself, until the doing of the very act which it is the object of the bill to enjoin—that is, the charging and assessing of the cost of the work as a whole as a tax. And this is not done. Complainants do not attempt to "make up the jurisdictional amount;" it is fixed by the contract, $10,000, which they all seek to defeat.

There is one law, one ordinance and one contract, and one item of costs contracted; and this is one charge and lien against all the abutting property, as one whole. The relief sought is one, to declare this one threatened tax charge, exceeding $10,000, illegal, and to prevent its levy and assessment, by one act of assessing and levy, as a whole. The solidarity of the object of the bill is most apparent.

The right of complainants to maintain their bill within the jurisdiction of the Federal Courts is affirmed by the authority of many analogous cases cited in my brief, as well as by the reasoning and authority of all the cases cited in opposition. All these cases fall fairly into two classes; which may be best distinguished in the language of this court. "The true distinction," says Mr. Justice Brown (in N. O. Pac. R. R. Co. vs. Parker, 143 U. S. 42), "is between cases where there are several plaintiffs interested collectively under a common title, and those wherein the matters in dispute are separate and distinct, and are joined in one suit for convenience or economy." And the cases which properly come within either classification are reviewed by this court in Gibson vs. Shufeldt (122 U. S. 27). The first class is "when several persons join, in equity or in admiralty, in one suit to assert *several and distinct in-*

terests, and those interests alone are in dispute, the amount of the interest of each is the limit of the appellate jurisdiction." But of the other class the court say:

"When suit is brought by two or more plaintiffs, or against two or more defendants, or to recover or charge property owned or held by different persons (which more often happens under the flexible and comprehensive forms of proceeding in equity and admiralty than under the stricter rules of the common law) the question—what is the matter in dispute—becomes more difficult. Generally speaking, however, it may be said that the joinder in one suit of several plaintiffs or defendants, who might have sued or been sued in separate actions, does not enlarge the appellate jurisdiction; that when property or money is claimed by several persons suing together, the test is whether they claim it under one common right, *the adverse party having no interest in its apportionment or distribution among them, or claim it under separate and distinct rights, each of which is contested by the adverse party;* that when two persons are suing or two parcels of property are sought to be recovered or charged, by one person in one suit, the test is whether the defendant's alleged liability to the plaintiff, or claim to the property, is joint or several; and that, so far as affected by any such joinder, the right of appeal is mutual, because *the matter in dispute between the parties is that which is asserted on the one side and denied on the other.* * * * *In equity, as in admiralty, when the sum sued for is one in which the plaintiffs have a joint and common interest, and the defendant has nothing to do with its distribution among them, the whole sum sued for is the test of the jurisdiction.*"

The distinction made between the two classes of cases is thus clearly indicated by the court (in Davis vs. Schwartz, 155 U. S. 455):

"The rulings of this court are uniform and consistent to the effect that, where several plaintiffs claim under the *same title*, and the *determination* of the cause *necessarily involves the validity* of that title, this court has jurisdiction, *though the individual claims of none of them exceed the requisite amount;* but when the matters in dispute are separate

and distinct, and are joined in one suit for convenience and economy, the case will be dismissed as to claims not exceeding five thousand dollars."

It is to this first class of cases that appellees so insist that the case at bar belongs. They cite all the cases to be found in the reports which hold that such a "joining of interests" is not permissible. But if the court will examine and analyze them, they may dispose of them in the language already used by this court in disposing of these same cases:

"In all the cases where we have held that several sums decreed in favor of or against different persons could not be united to give us jurisdiction on appeal, it will be found that the matters in dispute were entirely separate and distinct, and were joined in one suit for convenience and to save expense. (Citing and distinguishing cases.) Here, however, the matter in controversy was the amount due the salvors collectively, and not the particular sum to which each was entitled when the amount was distributed among them." ("The Connemara," 103 U. S. 754).

I will pass them briefly in review, and show their inapplicability to the facts of this appeal before presenting the array of those cases of the other class which sustain the jurisdiction which we claim. Our case is within one or the other class; by showing that it is *not* within the category insisted upon by appellees, by logic and law it comes within the other class, and the court has jurisdiction.

Gibson vs. Shufeldt (*supra*) was a creditor's bill by a number of general creditors, having distinct claims, to set aside a deed of trust for the benefit of preferred creditors.

Held: "That distinct decrees against distinct parties on distinct causes of action, or on a single cause of action in which there are distinct liabilities, cannot be joined to give this court jurisdiction on appeal."

In Russell vs. Stansell (105 U. S. 303), an injunc-

tion was asked against the *collection of the assessment that had been made.* The amount with which the petitioners, as individuals, were separately charged was as follows: Russell, $7.58; Stovall, $205.14; Reid, $229.29.

The Court said: "They are separately charged with several amounts assessed against them. There is no joint responsibility resting on them as a body. The proceeding on the part of the appellee was to require each of the several land owners in the levy district to pay a separate share of the debt which had been established against the district. *The recovery was against each owner separately. The object was to relieve each separate owner from the amount for which he personally, or his property, was found to be accountable.* An injunction, if granted, would necessarily be to prevent the appellee from collecting from each owner the amount for which he was separately liable. * * * Such distinct and separate interests cannot be united for the purpose of making up the amount necessary to give us jurisdiction on appeal."

The case of El Paso Water Company vs. El Paso (152 U. S. 157) is not at all in point. It was a suit by the Water Company, to which the city had granted the exclusive right for fifteen years to supply water in the town, to enjoin the city from establishing other works until after the expiration of that period. *Held*, that as it did not appear affirmatively that the new water works were to go into operation until after the expiration of the fifteen years, and as it did not appear from the record that there was over five thousand dollars in controversy, the court had no jurisdiction.

Neither is Colvin vs. Jacksonville (158 U. S. 457) in point. It was a suit by a single non-resident to enjoin a certain issue of municipal bonds of one million dollars. The complainants' property in Jacksonville would not be liable for as much as two thousand dollars of tax on account of the bond issue. *Held*, that

the interest of this non-resident, and not the entire bond issue of the city, was the matter in dispute.

Neither is Davis vs. Schwartz (155 U. S. 631). This was a *bill by several creditors* of an insolvent to set aside four chattel mortgages. Separate and distinct decrees, one in favor of Kent for thirty-six hundred dollars, were rendered on their separate claims which were allowed, and an appeal was taken from all the decrees. A motion was made by Kent to dismiss the appeal from the allowance of his claim, upon the ground that the requisite amount is not involved to give jurisdiction to this court. *Held*, "that the different mortgages assailed in this suit were for several and separate interests."

The Court say: "It is true, the four mortgagees were made joint defendants to the bill, but in reality their interests were several. The mortgages were separate, and a several and distinct decree was made in favor of each for the payment of his demand. A separate bill would have lain against each mortgagee, but as certain of the questions involved were common to all the mortgages, they were, *as a matter of convenience*, all made parties to the same bill."

The case of Stewart vs. Dunham, (115 U. S. 151) is within that class of cases where interests sought to be joined are *several* and *distinct*. This was a *creditors' bill* to reach property of debtor fraudulently conveyed. There were decrees, separate and distinct, in favor of a number of the complainant creditors, their several recoveries being specifically set out, ranging from ten thousand dollars to seven hundred dollars. Defendant appealed. Motion to dismiss appeal as to some, because less than five thousand dollars involved. *Held*, "that on appeal from decree in creditors' bill, where judgments are *several*, they cannot be joined to give jurisdiction."

Schwed vs. Smith (106 U. S. 188) was a *creditors' bill by several creditors* having *separate* and *distinct judgments*, none of which were in excess of five thousand dollars. Appeal dismissed, "because they had

separate and *distinct* interests depending on *separate* and *distinct judgments.*"

Hawley vs. Fairbanks (108 U. S. 543) is also a case of *separate* and *distinct interests* joined. Several bond holders brought separate suits and obtained *separate* and *distinct judgments*, as set out in their bill, against the town. The several plaintiffs then joined in a suit for mandamus. *Held*, "that when *distinct* causes of action in favor of distinct parties are united in one suit, and *distinct judgments* are rendered for or against the several parties, their judgments cannot be joined to give us jurisdiction."

The case of New Orleans Pac. Ry. vs. Parker (142 U. S. 42) cited by defendants, is *strongly in point for complainants*, and they ask the Court's attention to the same as reported. It was a bill brought by Parker, "for himself and for all parties holding bonds and coupons similar to those herein set forth," to foreclose a railroad mortgage. Parker claimed only the amount of coupons matured upon two bonds. Subsequently one Hamlin, another bond holder, intervened. On trial two distinct decrees were rendered for plaintiffs, one in favor of Parker for twenty-four hundred dollars, and one for Hamlin for six thousand dollars. Defendants appealed. Parker moved "to dismiss appeal as to him upon the ground that less than five thousand dollars was involved."

(The Court's attention is respectfully called to the language of Mr. Justice Brown, on pages 50, 51 and 52, where this distinction is clearly stated.)

The Court will thus see that all the cases relied upon by defendants are clearly within a different class from the cases relied upon by complainants, and in which it is submitted that their case comes, as presenting a common cause of action for a common relief. ALL of defendants' cases, which they oppose to this jurisdiction, are *creditors' bills*, or other actions in which *sep-*

arate and *distinct* demands or liabilities are sought to be joined.

To the foregoing cases, relied upon by defendants, and none of which "touch" us, we oppose the whole array of the other class of cases, which do, in their own facts, and by analogy, sustain the jurisdiction of the Federal Court in the case at bar. "The general principle observed in all these cases is," as the Court said in Clay vs. Field (138 U. S. 464), "that if several persons be joined in a suit in equity or admiralty, and have a common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction."

Among so many cases, fully and fairly in point of authority, in behalf of this jurisdiction, it may be that the one most alike in point of facts, as involving a tax injunction suit, is to be found in Brown vs. Trousdale (138 U. S. 389). There several hundred tax-payers of a county, for themselves and others associated with them, filed a bill averring the "levy of a tax to pay interest on bonds, by the county judge, and that the sheriff was about to proceed in the collection thereof, and made the sheriff and county judge parties defendant; and prayed an injunction against the sheriff from attempting to collect the particular tax, and against the county judge from making any order or further levy in the premises, and for a decree that the original bonds be declared invalid, and all holders thereof be perpetually enjoined from collecting the principal of the bonds and the interest thereon."

On the question of the jurisdiction of the Circuit Court, this court, speaking through Chief Justice Fuller, said:

"The main question at issue was the validity of the bonds, and that involved the levy and collection of taxes for a series of years, to pay the interest thereon and finally the principal thereof, and not the mere restraining of the tax for a single year. The grievance

complained of was common to all the plaintiffs and to all whom they professed to represent. The relief sought could not be legally injurious to any of the taxpayers of the county, as such, and the interest of those who did not join in or authorize the suit was identical with the interest of the plaintiffs. The rule, applicable to plaintiffs, each claiming under a separate and distinct right, in respect to a separate and distinct liability, and that contested by the adverse party, is not applicable here. For although, as to the tax levied for the particular year, the injunction sought might restrain only the amount levied against each, that order was but preliminary, and was not the main purpose of the bill, but only incidental. The amount in dispute, in view of the main controversy, far exceeded the limit upon our jurisdiction, and disposes of the objection of appellees in that regard."

In that case, as in this, "the main question at issue was the validity"—there, of the bonds; here, of the special assessment. There, the relief of the complainants from paying the particular tax levied against them individually, "was not the main purpose of the bill, but only incidental." Here, we seek to enjoin an entire cost charge and assessment and declare invalid the law authorizing its assessment. That is the "main purpose" of the bill. That we may escape paying what may thereafter be apportioned against each individual is "only incidental." And the possibility of this "incidental" relief cannot be considered here, and cannot affect the direct purpose of the suit. This has been frequently declared by the court. In a recent case (Washington & Georgetown Ry. Co. vs. District of Columbia, 146 U. S. 227,) the court say:

"The principle that the sum or value really in dispute between the parties in a case before this court, as shown by the whole record, is the test of its appellate jurisdiction, without regard to the collateral effect of the judgment in another suit between the same or other parties, has been repeatedly affirmed by this court. It is well settled that our appellate jurisdiction, when dependent upon the sum or value really in dispute

between the parties, is to be tested without regard to the collateral effect of the judgment in another suit between the same parties. No matter that it may appear that the judgment would be conclusive in a subsequent action—it is the direct effect of the judgment which can alone be considered."

It is, thus, all the more apparent that the "matter in dispute" is the charge and assessment of the special tax, as one whole, its validity and the constitutionality of the law authorizing it. It is the tax itself, the whole amount of it, which we resist, under a common interest to defeat it. A case strikingly in point is Davies vs. Corbin (112 U. S. 36). There, a number of county bondholders had recovered separate judgments against the county; they compelled, by mandamus, the levy of a tax to pay their judgments; the tax was levied, and then the collector refused to collect the tax. All the judgment-holders then joined in mandamus in the Circuit Court to compel the collector to collect the tax and pay their judgments, "the aggregate amount of which was much more than $5,000, but the amount due upon each is not stated." The Circuit Court granted the writ, and the collector appealed. Motion was made to dismiss the writ of error, "because, second, the value of the matter in dispute does not exceed $5,000, inasmuch as no one of the relators will be entitled to receive, of the tax collected, so much as $5,000, and no single taxpayer will be required to pay that amount of tax." But the court overruled the motion, holding that "*the value of the matter in dispute is measured by the whole amount of the tax, and not by the separate parts into which it is to be divided when collected.* It is conceded that the amount of the tax is more than $5,000."

Mr. Chief Justice Waite, speaking for the court, said:

"The second objection is, to our minds, equally untenable. The writ which has been ordered is not like that in Hawley vs. Fairbanks (108 U. S. 543), to compel the levy of taxes to pay separate and distinct

judgments in favor of several relators, who, for convenience and to save expense, united in one suit to enforce their respective rights, but to compel a tax collector to collect a single tax which has been levied for the joint benefit of all the relators, and in which they have a common and undivided interest. As in the cases of Shields vs. Thomas (58 U. S. 5), and "The Connemara" (103 U. S. 754), all the relators claim under one and the same title, to-wit: the levy of a tax which has been made for their benefit. They have a common interest in the tax, and it is perfectly immaterial to the tax collector how it is divided among them. * * * His duty is to collect the tax for the benefit of all alike. A payment of the judgment of one creditor would not relieve him from his obligation to collect the whole tax. The object of the proceedings is, *not to raise the sums due the relators*, but to raise the whole tax of ten mills on the dollar. As the matter stands, each relator has the right to have the whole tax collected for the purpose of distribution among all the creditors. It is apparent, therefore, that *the dispute is between the tax collector on one side and all the creditors on the other, as to his duty to collect the tax as a whole for division among them, after the collection is made, according to their several shares. The value of the matter in dispute is measured by the whole amount of the tax, and not by the separate parts into which it is to be divided when collected.* It is conceded that the amount of the tax collected is more than $5,000."

Thus it is made clear that he who runs may read—that it is the nature of the relief sought, the immediate matter at issue, that which "*is asserted on one side and denied on the other*," that is the "matter in dispute," and its value determines the jurisdiction. In this case, the issue is the converse of that in the Davies case, but the principle applies exactly. Here we all join to resist the levy of a tax, which we have a common and undivided interest, as against the party levying the tax, in resisting. It is perfectly immaterial to the tax assessor or the company collector how it is to be apportioned when levied, on this or that complainant's property. The assessment is of a whole tax of $10,000 on all the

land abutting the improvement, whether this be one tract owned by one man or a hundred lots separately owned. A payment of his portion of the assessment by one or more lot-owners would not prevent the levy of the tax as a whole. The object of this proceeding is, not to enjoin the collection of the portion of the assessment which may be due by any complainant, after tax bills issued, but to defeat the levy of the whole tax. It is apparent, therefore, that the dispute is between the city on the one side and the property owners on the other, as to the city's rights to assess the special tax as a whole, for apportionment against them severally, after the assessment is made, according to their several frontages on the street improved. The value of the matter in dispute is thus measured by the whole amount of the tax under the contract, $10,000, and not by the separate parts into which it is to be divided when assessed, levied and apportioned.

Other cases having the full sanction of this court very strongly support our contention. Shields vs. Thomas (58 U. S. 3) is regarded as a leading case of this class, probably the first case drawing the distinction. That case is fully in point, and is here cited in the language of the court:

"The representatives of John Goldsberry filed a bill against Shields, charging that he had converted to his own use a large amount of the property to which these representatives were entitled. In that proceeding they obtained a decree against him for a large sum of money; the shares of the respective claimants being apportioned to them in the decree; and the appellant was directed to pay to each the specific sum to which he was entitled, as his proportion of the property misappropriated by Shields.

"The appellant, Shields, lived in Iowa when this decree was made; and the present appellees, who are a portion of the representatives of John Goldsberry, united in the bill in equity now before us to enforce the decree of the Kentucky court; and praying that Shields might be compelled to pay to them respectively the several sums

decreed in their favor in the proceedings in Kentucky; and they obtained the decree in question according to the prayer of their bill.

"The whole amount recovered against Shields in the proceeding in Iowa exceeds $2,000. But the sum allotted to each representative who joined in the bill was less. And a motion is made to dismiss, upon the ground that the sum due to each complainant is severally and specifically decreed to him; and that the amount thus decreed is the sum in controversy between each representative and the appellant, and not the whole amount for which he has been held liable. And if this view of the matter in controversy be correct, the sum is undoubtedly below the jurisdiction of the Court, and the appeal must be dismissed.

"But the court thinks the matter in controversy in the Kentucky court was the sum due the representatives of the deceased collectively, and not the particular sum to which each was entitled, when the amount due was distributed among them according to the laws of the State. They all claimed under one and the same title. They had a common and undivided interest in the claim, and it was perfectly immaterial to the appellant, how it was to be shared among them. He had no controversy with either of them on that point; and if there was any difficulty as to the proportions in which they were to share, the dispute was between themselves, and not with him.

"It is like a contract with several to pay a sum of money. It may be that the money when recovered is to be divided between them in equal or unequal proportions. Yet, if the controversy arises on the contract, and the sum in dispute upon it exceeds $2,000.00, an appeal would clearly lie to this court, although the interest of each individual was less than that sum."

These cases need no comment or argument. *Res ipsa loquitur.* The further citation of authorities is but cumulative. But that no precedent may be wanting, I beg indulgence to accumulate them yet somewhat, as the learned counsel for the city seems to have quite overlooked them all in his researches.

The cases recognize, as in the nature of a test, whether the party against whom the seemingly several

interests are joined is affected by or interested in the ultimately severable interests, or in the proportion or distribution of the subject-matter of the suit. If the final apportionment is immaterial to the defendant, the demand against him is, as to him, one and entire, irrespective of any ultimate possible divisibility. This appears in the Shields vs. Thomas case, *supra*. The same principle, as a test, was recognized in the case of "The Connemara" (103 U. S. 754). Let the court state the case, and apply the rule:

"The suit below was by a set of salvors to recover for a single salvage service, and there was but one claim filed for the property saved.

"The total amount of the recovery was $14,198, but, in the division among the several parties entitled to share in the recovery, some got less than $5,000.00. Separate and distinct interests were not united in the suit. The service rendered was the joint service of all the salvors and the recovery was on that account. It was a matter of no consequence to the owners of the property saved how the money recovered was apportioned among those who had earned it. The owners were decreed to pay the salvors for what they, acting together in a common service, had done. In such a suit we think the owners cannot be deprived of their appeal because the court below, in the further progress of the cause, saw fit to apportion the recovery among the salvors according to their respective merits. The decree is, in legal effect, one decree in favor of all the salvors, they having, as between themselves, unequal interests."

So, too, in "The Mamie" (105 U. S. 773), and Trust Co. vs. Waterman (106 U. S. 65).

Freeman vs. Dawson (110 U. S. 264) was a bill to set aside a deed of trust. From a decree for complainants the defendant trustee appealed. The Court say:

"The appellee has moved to dismiss the appeal for want of a sufficient amount in controversy to sustain the jurisdiction of this court. The reason assigned for the motion is that, if appellant's position is maintained, no one of the creditors secured by the deed of trust

will receive so much as $5,000 out of the fund of $6,000 in court; but it is admitted that the whole amount of the debts secured by the deed of trust exceeds that sum. The *sole question at issue* on this appeal is the *legal title to the whole fund*, as between Dawson, the judgment creditor, on the one hand, and Freeman, the grantee in the deed of trust, on the other; and no question of payment to or distribution among the several *cestuis que trust* is presented. The motion to dismiss must therefore be overruled."

So in Handley vs. Stutz (137 U. S. 366), a case in which the *whole of the relief sought* was held to be the "matter in dispute," irrespective of any final distribution of interests. The Court thus states the case:

"This is a bill in equity by some, in behalf of all of the creditors of a corporation, against the corporation and holders of stock therein. Such a bill can only be maintained by one or more creditors in behalf of all, and not by any one creditor to secure payment of his own debt to the exclusion of others. * * * The contest is upon the sufficiency in amount of the creditors' claims to support the jurisdiction of the Circuit Court in the first instance, and of this Court on appeal, within the meaning of the statutes limiting the jurisdiction of each court to cases in which the sum in dispute exceeds $2,000 and $5,000, respectively. * * * The sums alleged to be due from the corporation to the original plaintiffs amounting to more than $2,000, the Circuit Court had jurisdiction of the case, and authority to administer and distribute the amounts due from the individual defendants to the corporation for unpaid subscription to a stock, as a trust fund for the benefit of all the creditors of the corporation. * * * The trust fund so administered and ordered to be distributed by the Circuit Court amounting to much more than $5,000, the appellate jurisdiction of this court is not affected by the fact that the amounts decreed to some of the creditors are less than that sum. It was immaterial to the appellants how the sums so decreed to be paid by them should be distributed."

So, in the case at bar, the ultimate apportionment of the tax upon complainants severally is wholly imma-

terial to the city which assesses and levies the tax as a whole, and to the construction company in whose favor the tax is levied and the lien created. The severalty of title and the final distribution of liability for payment, by the issuance of separate special tax bills against different lots of ground, is to them wholly a matter of indifference; it is merely an administrative measure. It is immaterial to them how the property is subdivided, or whether it is subdivided at all. It is entirely immaterial to the city, and to the company, whether a single tax bill is ultimately issued for the gross contract price, $10,000, as against all the abutting property as a whole, under one ownership, or whether separate tax bills are issued to correspond with whatever subdivisions or several ownerships of the abutting property subject to the charge and lien. This case is clearly within that principle of the law of jurisdiction, as established in the preceding cases, in which the parties resisting have a common interest in the subject matter of the litigation, and in which the adverse party is wholly unconcerned in the ultimate unequal separate interests of the parties among themselves, or in the distribution of the benefits (in this case relief from an illegal assessment) among the several complainants. As in Estes vs. Gunter (121 U. S. 183), which was a bill filed by a number of preferred creditors for an amount in excess of $5,000, under an assignment, to enjoin a sale of the property by attaching creditors, and to establish the assignment with its preferences, the court *held* that the value of the property, over $5,000, was the matter in dispute, and said:

"The decree is not that B. and M. be paid their debt, but that nothing be paid to the claimants. The distribution of the fund in court is to be made hereafter, as law and justice may require. The effect of what has been done (the decree) is to defeat the claim which E. and D. have set up in their bill; and, so far as it now appears, it matters not to them what

disposition is made of the assigned property. That can be determined hereafter, when the rights of other parties shall be presented in proper form."

Here the decree we seek is, not that the collection of tax bills against us severally be enjoined, but that no tax be charged or assessed, and, as an incident, no tax bills be issued.

A case upon which we greatly rely in sustaining this jurisdiction, in holding that *the ultimate loss or gain involved, as the immediate result of the decree*, is the "sum or value" of the "matter in dispute," is Washington Market Co. vs. Hoffman (101 U. S. 112). It is a case altogether in point and principle with this of ours. The nature of the case and the principle involved are best stated in the language of the court:

"This was a bill originally brought by James A. Hoffman against the Washington Market Company, seeking an injunction against the company proceeding to sell a stall in their market, occupied by him, and seeking also a decree establishing his right to retain possession of said stall so long as he chose to occupy it for his business as a butcher. Subsequently, the bill was amended, by consent, and 205 other occupants of other stalls in the market were made complainants with Hoffman. The relief then asked was an injunction in favor of each of the complainants, together with a decree establishing the right of each to the continued occupancy of his stall, so long as he might choose to occupy it for his business. * * *

"The question to be determined is whether the amount in controversy is sufficient to give us jurisdiction of the appeal. Upon this we have no doubt. While it may be true that if Hoffman was the sole complainant the amount in controversy would be insufficient to justify an appeal either by him or by the Market Company, the case is one of 206 complainants suing jointly; the decree is a single one in favor of them all, and in denial of the right claimed by the company, which is of far greater value than the sum which, by the Act of Congress, is the limit below which an appeal is not allowable. It is averred under oath in the pleadings that the sale which the company proposed to make and the

court below enjoins, would have realized to the Market Company more than $60,000. Of this benefit the decree deprives them. It is very plain, therefore, that the appeal is one within our jurisdiction."

The latest case in which this court has sustained its jurisdiction upon the principle which we invoke is Overby vs. Gordon (decided April 9th, 1900, No. 12 Supreme Court Reporter, 603). That was a suit to establish a will by the sole legatee, the next of kin being made parties defendant, as distributees claiming against the will. Decree was in favor of the proponent of the will, and the distributees took writ of error. Motion was made in this court to dismiss the writ, "because the interests of the plaintiffs in error in respect of the judgment to which said writ of error is directed are several, and the matter in dispute, exclusive of costs, as to no one of the said plaintiffs in error, exceeds the sum or value of $5,000."

"What, then," asks Mr. Justice White, on behalf of the unanimous Court, "was the matter in dispute in this controversy? The answer manifestly is, that it was whether an estate valued at more than $9,000 should pass in the mode provided in an alleged last will and testament, which, in effect, excluded the next of kin of the decedent from the enjoyment of the principal of the estate, or in the mode provided by the law of the domicil of the decedent for the transmission of an intestate estate. On the one hand was Mrs. Gordon, a sister of the deceased, and representing the interests under the alleged last will, asserting the validity of that document, and opposed to her were the plaintiffs in error, some of the next of kin of the deceased, interested in establishing his intestacy. Had the trial court admitted in evidence the transcript of record from the De Kalb Court, and given it the conclusive force contended for, it would seem beyond question that as to those interested in upholding the validity of the alleged will, the value of the estate affected by that instrument would have been the matter in dispute. The matter in dispute necessarily must be the same as to the unsuccessful next of kin who are prosecuting this writ of error, and the amount of whose several interests

in the estate of the decendent was not a question litigated below. The case is analogous in principle to that of Shields vs. Thomas. In that case it was held that where the representatives of a deceased intestate recovered a judgment against an administrator for an amount in excess of the sum necessary to confer jurisdiction to review, and such recovery was had under the *same* title and for a common and undivided interest, this court had jurisdiction, although the amount decreed to be distributed to each representative was less than the jurisdictional sum. In the case at bar, the contestants below sought, not an allotment to them of their interests, if any, in the estate, but an adjudication that the alleged last will and testament possessed no validity, and that contention was advanced by virtue of a claim of common title in the next of kin of the decedent to the *corpus* of the estate, such title, if any, being derived from the law of the alleged domicil of the deceased. In this aspect, the amount of the estate was the matter in dispute. New Orleans P. R. Co. vs. Parker, 143 U. S. 42, 51, 52, and cases there cited. There is therefore no merit in the objection to the exercise of jurisdiction."

This is "the conclusion of the whole matter." By a cumulation of authority, and on the most luminous principle, the facts of the case at bar bring it within the jurisdiction of the Circuit Court of the United States. The special tax had not yet been assessed or levied; it was an entity *in posse* under the ordinance and contract; the "matter in dispute" over which this contest wages is the right to give it being *de facto;* its sum or value is fixed by the contract, $10,000. No separate liability exists or is in issue; no distinct interest is involved.

In Russell vs. Stansell (*supra*) the tax bills had been issued, and it was sought to enjoin the collection of the bills. Not so here. Circumstances alter cases. It is so recognized by this court in a late case, curiously analogous of this.

In Fishback vs. W. U. Telegraph Co. (161 U. S. 96) a bill was filed by the Telegraph Company against

the Railroad Commission of Arkansas, and 47 clerks of different counties, to enjoin the collection of taxes assessed by the commission against the company. The commission had already assessed the taxes and apportioned them to the different counties, and the county clerks were about to enforce their collection. The amount of tax apportioned to no one county exceeded the jurisdictional amount. The court *held*, that under this state of facts the bill could not be maintained, as the amount of taxes due in each county was a separate and distinct liability and could not be joined to make up the jurisdictional amount.

But it was suggested to the court that the case be tried as though the assessment *had not yet been made*, and the commissioners *be enjoined from making the assessment*. But the court said:

"Without intimating in any degree under what circumstances, if at all, such a bill might lie, we may add that jurisdiction cannot be sustained here on the ground that, as the railroad commissioners were parties defendant, this bill might be treated, though they had already acted, as seeking to *restrain the making of the assessment as a whole*."

The court thus recognizes the distinction which exists, and which we invoke with confidence in this case; that famous difference of "before and after taking," and tacitly or by obvious implication hold that, *before assessment and levy and apportionment*, the whole tax resisted and sought to be enjoined, would be the "matter in dispute."

Complainants respectfully and earnestly submit that they are fairly within the principle which entitles them to unite their joint and mutual interests in seeking a common remedy, namely, the enjoining of an illegal tax and the annulling of the prejudicial law. It is a threatened assessment and levy to the total cost as a charge against all the abutting property which it is sought to enjoin. If such assessment is illegal, it is

illegal in its entirety. If the special tax as provided in the charter is unconstitutional, it is unconstitutional *ab initio* and *in toto*. The fact that when the assessment is made, if it be permitted to be made, the tax may be apportioned among individuals, is immaterial to the defendants and cannot be availed of as a defense to this action. Complainants, if entitled to relief, are entitled to be relieved of the whole illegal assessment and to nullify an obnoxious law. This is the relief sought; this the "matter in dispute," and it is within the jurisdiction of the Federal Court of equity.

Respectfully submitted,

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